Chaw Anui v Tan Kim Chai

HIGH COURT (SHAH ALAM) — PETITION NO MT3–33–126 OF 1999
LOW HOP BING J
10 JULY 2004

Family Law — Matrimonial property — Division of property — Whether gift excluded from division — Meaning of 'acquire' — Whether assets acquired by joint effort — Law Reform (Marriage and Divorce) Act 1976 s 76

Family Law — Matrimonial property — Maintenance — Claim for — Whether amount inflated, arbitrary — Whether can be paid lump sum — Whether can seek security for lump sum payment — Law Reform (Marriage and Divorce) Act 1976 s 79

The wife filed an application against the husband for the ancilliary reliefs which, inter alia, were as follows: (i) maintenance of RM15,000 per month; (ii) equal division of all matrimonial properties registered under the several named companies and also under the husband's name; (iii) division of all shares acquired during the marriage; and (iv) all monies held in the bank during the marriage. The wife further prayed for the maintenance to be resolved by way of lump payment. However, it was challenged by the husband on the ground that the Law Reform (Marriage and Divorce) Act 1976 ('the Act') does not contain any provision empowering the court to do so. The husband also argued that some of properties, namely the two bungalows were gifts and therefore should be excluded from the division. The husband further argued that the properties held by LPI (M) Sdn Bhd and Sathyam Holdings Sdn Bhd should also be excluded from division because they had been transferred to his brother and daughter.

Held, allowing the application:

(1) The issue of a fair and reasonable maintenance must be determined by reference to the facts and circumstances of each particular case. In the instant case, factors taken into consideration were, inter alia: (i) devotion of the wife; (ii) the unlikelihood of the wife to be gainfully employed; (iii) wife's health and medical needs; (iv) the husband's financial means; (v) the living standard of the wife; and (vi) the means and needs of parties (see para 56).

(2) As s 77(1)(a) of the Act contains no restrictive or prohibitive words, the power to make such an order is not confined to award of maintenance by periodical payments only. The discretionary power of the court under s 77(1)(a) is unfettered in the sense that the court is empowered to make an award of maintenance by way of lump sum payment having regards to the facts and circumstances prevailing in a particular case and established judicial principles (see para 72).

(3) Further, in the instant case, the defendant husband had the financial means, capacity and resources to make lump sum payment in order to achieve a practical and feasible clean break (see para 77).

(4) Pursuant to s 79 of the Act, the court had the power to make an order to secure the payment of the aforesaid lump sum maintenance (see para 80).

(5) On the facts, the two bungalows were not gifts and even if they were gifts, they would not be excluded from distribution as matrimonial assets, since 'coming into possession of' is a form of acquiring an asset within the meaning of s 76 (see paras 102–103, 106).

(6) The properties held by LPI (M) and Sathyam Holdings and all share portfolios which husband previously held but had disposed of, should be subject to distribution (see paras 114).

[**Bahasa Malaysia summary**

Isteri memfailkan satu permohonan untuk relief sampingan yang antara lainnya adalah seperti berikut: (i) nafkah sebanyak RM15,000 sebulan; (ii) pembahagian sama rata kesemua harta-harta suami-isteri yang didaftarkan di bawah beberapa syarikat yang dinamakan dan juga di bawah nama suami; (iii) pembahagian kesemua saham yang diperoleh semasa perkahwinan; dan (iv) segala wang yang dipegang di dalam bank semasa perkahwinan. Si isteri selanjutnya memohon agar bayaran nafkah dibayar secara sekali gus. Namun begitu, si suami mengatakan bahawa mahkamah tidak dapat berbuat demikian kerana ianya tidak diperuntukkan di bawah Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 ('Akta tersebut'). Suami juga mengatakan bahawa sebahagian dari harta, iaitu dua buah banglo merupakan hadiah dan dari itu terkecuali dari pembahagian. Si suami selanjutnya mengatakan bahawa harta yang dipegang oleh LPI (M) Sdn Bhd dan Sathyam Holdings Sdn Bhd juga patut dikecualikan dari pembahagian kerana ia telah dipindah milik kepada adik dan anaknya.

Diputuskan, membenarkan permohonan tersebut:

(1) Isu nafkah yang berpatutan dan wajar hendaklah diputuskan dengan merujuk kepada fakta-fakta dan keadaan sesebuah kes. Dalam kes semasa, faktor-faktor yang diambil kira, antara lain adalah: (i) kesetiaan isteri; (ii) ketidakmungkinan isteri mendapat pekerjaan; (iii) keperluan kesihatan dan perubatan isteri; (iv) kemampuan kewangan suami; (v) taraf hidup isteri; dan (vi) kemampuan dan keperluan pihak-pihak (lihat perenggan 56).

(2) Oleh kerana s 77(1)(a) Akta tersebut tidak mempunyai sebarang perkataan terbatas atau perkataan melarang, kuasa untuk membuat perintah sedemikian tidak terhad kepada award nafkah berkala. Kuasa budi bicara mahkamah di bawah s 77(1) (a) tidak terbelenggu dan mahkamah mempunyai kuasa untuk membuat award nafkah secara sekali gus setelah meneliti fakta-fakta dan keadaan sesuatu kes dan prinsip kehakiman yang tetap (lihat perenggan 72).

(3) Selanjutnya, dalam kes semasa, defendan/suami mempunyai kemampuan kewangan, keupayaan dan sumber-sumber untuk membuat bayaran sekali gus bagi mencapai pemutusan bersih pertalian (lihat perenggan 77).

(4) Seksyen 79 Akta tersebut memperuntukkan bahawa mahkamah mempunyai kuasa untuk membuat perintah jaminan untuk pembayaran sekali gus nafkah tersebut (lihat perenggan 80).

(5) Pada fakta, kedua buah banglo tersebut bukanlah hadiah dan jika ianya hadiah, ia juga tidak dapat dikecualikan dari pembahagian harta suami-isteri kerana 'datang ke milikan' adalah merupakan satu bentuk perolehan aset dalam erti kata s 76 (lihat perenggan 102–103, 106).

(6) Harta-harta yang dipegang oleh LPI (M) dan Sathyam Holdings dan kesemua saham-saham yang dahulunya dipegang si suami tetapi telah dipindah milik, juga tertakluk untuk pembahagian (lihat perenggan 114).]

Notes

For cases on division of property, see 7(2) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 3322–3413.

For cases on maintenance, see 7(2) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 3422–3424.

For division of matrimonial property, see 8 *Halsbury's Laws of Malaysia* (2003 Reissue) paras [140.395]–[140.397].

For maintenance of spouse, see 8 *Halsbury's Laws of Malaysia* (2003 Reissue) paras [140.376]–[140.383].

Cases referred to

Borthwick, In Re, Dec'd, Borthwick And Anor v Beauvais And Ors [1949] 1 Ch 395 (refd)
C v C [1962] 4 FLR 461 (refd)
Ching Seng Woah v Lim Shook Lin [1997] 1 MLJ 109 (refd)
Diana Clarice Chan Chiing Hwa v Tiong Chiong Hoo [2002] 2 MLJ 97 (refd)
Doris Howell v Put Jin Kong & Anor [1999] 1 AMR 476 (refd)
Hartecon JV Sdn Bhd & Anor v Hartela Contractors Ltd [1996] 2 MLJ 57 (refd)
Jacqueline Bey v Edmond Lee Yok Lung [1988] 2 MLJ 335 (refd)
Keng Huat Film Co Sdn Bhd v Makhanlall (Properties) Pte Ltd [1984] 1 MLJ 243 (refd)
Koh Kim Lian Angela v Choong Kian Haw [1994] 1 SLR 22 (refd)
Lee Puey Hwa v Tay Cheow Seng [1991] 3 MLJ 1 (refd)
Leow Kooi Wah v Philip Ng Kok Seng & Anor [1997] 3 MLJ 133 (refd)
Loke Wan Tho v Christina Loke [1961] MLJ 254 (refd)
Louis Pius Gilbert v Louis Anne Lise [2000] 1 SLR 274 (refd)
Lumsden v Lumsden [1963] 5 FLR 388 (refd)
Minton v Minton [1979] AC 593 (refd)
N(f) v C [1997] 3 MLJ 855 (refd)
Preston v Preston [1982] 2 All ER 41 (refd)
Sivanes a/l Rajaratnam v Usha Rani a/p Subramaniam [2002] 3 MLJ 273 (refd)
SS v HJK [1991] 1 LNS 99 (refd)
Tai Lee Finance Co Sdn Bhd v Official Assignee & Ors [1983] 1 MLJ 81 (refd)
Tara Rajaratnam v Datuk Jagindar Singh & Ors [1983] 2 MLJ 127 (refd)
Tham Yin Kee (p) v Lim Hee Peng [2002] 1 LNS 9 (refd)
V Sandrasagaran Veerapan Raman v Dettarassar Veletine Souvina Marie [1995] 5 CLJ 474 (refd)
Wachtel v Wachtel [1973] 1 All ER 829 (refd)

Legislation referred to

Companies Act 1965
Contracts Act 1950 s 17
Evidence Act 1950 ss 91, 92, 101
Law Reform (Marriage and Divorce) Act 1976 ss 76, 76(1), 76(2)(s), 76(3), 76(4)(b), 77(1)(a), 78, 79
Matrimonial Proceedings and Property Act 1970 s 2(1)(c)

W Satchithanandhan (W Satchithanandhan & Co) for the petitioner.
YN Foo, with her Faridah Abdullah (YN Foo & Partners) for the respondent.

Low Hop Bing J:

INTRODUCTION

[1] This is an exceedingly difficult case concerning issues of ancilliary reliefs sought by the petitioner wife from the respondent husband both of whom have respectively attained more than half a century in terms of age, and who have through thick and thin shared some 34 years of married life, which would otherwise have been an excellent record of happy and holy matrimony but for the facts and circumstances which I now have the formidable duty of unfolding.

[2] For brevity, convenience and ease of reference, the parties shall be referred to hereinafter as wife and husband respectively.

WIFE'S APPLICATION

[3] This is an application by the wife against the husband for the following ancilliary reliefs:

(1) maintenance of RM15,000 a month commencing from November 1998;

(2) equal division of all the matrimonial properties registered under LPI (M) Sdn Bhd ('LPI (M)'), Sathyam Holding Sdn Bhd ('Sathyam Holding') and also under the husband's name and all the properties and shares held in the name of Lai Company Sdn Bhd ('Lai Company'), Tan Yew Lai & Sons Sdn Bhd ('Tan Yew Lai & Sons'), Unicolour Printing Ink Manufacturing Sdn Bhd ('UPI Manufacturing'), and all other companies incorporated during subsistence of the marriage;

(3) division of all the shares acquired during the marriage including the Margin Account Facility (A/C No 001-201-003022-7) with Arab-Malaysian Securities Sdn Bhd and traded shares in the various counters therein;

(4) division of all monies held in the banks during the marriage;

(5) costs; and

(6) further and other reliefs.

[4] The hearing of this application had proceeded by way of protracted evidence adduced from numerous witnesses called by both the wife and the husband respectively.

FACTUAL BACKGROUND

The marriage

[5] The parties were married according to Chinese traditional rites on 20January 1966. The marriage was subsequently registered on 26 April 1968 at the Registry of Civil Marriages in Kuala Lumpur. They were blessed with three children, viz two daughters Tan Mooi Heong on 20 October 1966 and Tan Mooi Lien on 5 November 1967 and a son Tan Teck Joo on 17 November 1969. Their second daughter Moi Lien who was a spastic child passed away on 24 September 1997.

[6] The parties have had a considerable period of happy marriage and their last matrimonial home was a bungalow house at No. 5 Jalan Bukit Tinggi, Taman Dato Tan Yew Lai, Kuala Lumpur ('Bungalow No 5').

[7] The husband is one of the 22 children of the late Dato Tan Yew Lai who during his life time was an eminently successful property developer. Matrimonial disputes developed subsequently, in October or November 1998, when the wife left Bungalow No 5 after 34 years of marriage.

[8] The husband had during the marriage given the wife RM2,000 a month for the household and her personal expenses.

[9] On 29 July 1999, the Marriage Tribunal issued a certificate confirming that the parties could not be reconciled, the marriage having irretrievably broken down, as a result of which the wife filed a petition for, inter alia, judicial separation, while the husband cross-petitioned for divorce.

[10] By consent of the parties, decree nisi was granted by me on 16 August 2000, which was made absolute three months later.

Shareholdings

[11] The parties' shareholdings in companies LPI (M) and Sathyam Holding are as follows:

LPI (M)		
Wife	119,875 shares	(24.24%)
Husband	274,625 shares	(55.53%)

[12] Their two surviving children are the other shareholders.

Sathyam Holding		
Wife	12,001 shares	(30%)
Husband	28,001 shares	(70%)

[13] Both these companies had never paid dividends to the shareholders.

[14] The wife had never worked during the marriage, being a full time housewife and homemaker, and had never put in any money in these two companies, the entire capital being from the husband.

First matrimonial home and business

[15] The parties' first matrimonial home in 1966 was a double-storey shoplot at No 172 Jalan Tuanku Abdul Rahman, Kuala Lumpur ('shoplot No 172'), where they lived on the top floor while the husband carried on a small business of selling motorcycles under the name of Lai Motor, from which the husband earned an average monthly income of RM500–RM600, with no other sources of income. The wife took care of the husband and other household duties such as marketing, cooking and washing, as they had no maid then.

[16] The wife also assisted in the business by looking after the shop with the workers, when the husband was outstation on business. The wife also opened the shop daily for all the workers to come in and closed the shop when the husband returned late from business.

LPI (M)

[17] In 1968 or 1969, the husband started a printing ink business under the name of Lai Printing Ink in the same premises as Lai Motor which ceased business in the early 70s.

[18] LPI (M) was incorporated on 18 December 1979 to take over the business of Lai Printing Ink. Both the parties were the subscriber shareholders and first directors who signed all resolutions and joint and several guarantees by way of securities in favour of banks for credit facilities granted to it, thereby bringing them business prosperity and enhanced economic standing.

Subsequent matrimonial homes

[19] The natural progression of business prosperity and enhanced economic status saw the parties in 1994 in a more opulent matrimonial home, ie a double-storey bungalow with five rooms, a store room, a swimming pool and a garden at No 2, Persiaran Bukit Tinggi, Taman Dato Tan Yew Lai, Kuala Lumpur ('Bungalow No 2'), held under HS(D) 40313, Lot No 27141 Mukim of Petaling which was transferred vide Form 14A from the husband's father Dato Tan Yew Lai to him for a consideration of RM16,000.

[20] In 1985, the parties amassed greater fortunes and moved to Bungalow No 5, a three-storey mansion with five rooms, an office room, a swimming pool, a basement snooker, jacuzzi and a garden, held under HS(D) 40314 Lot No 27142 Mukim of Petaling which was transferred vide Form 14A from his father to him for a consideration of RM37,905.

[21] The cost of construction for Bungalow No 5 in the sum of about RM190,000 was sourced from the fund of LPI (M).

[22] They had two maids and a gardener, and several luxury cars including a Mercedez Benz.

Sathyam Holding

[23] On 16 February 1990, the parties as subscriber shareholders and first directors incorporated this company, for the purposes of trading in paper and paper products, as well as for rental collections from its own properties.

[24] The parties executed joint and several guarantees by way of securities in favour of banks for loans and credit facilities granted to it for the purchase of properties and the running of the companies' businesses. They still remain as guarantors with continuing liabilities to the banks.

Business volume and family lifestyle

[25] The accounts of both LPI (M) and Sathyam Holding show good business and increased trade volumes, with average annual sales of about RM4m for LPI (M), and annual turnover of RM500,000 for Sathyam Holding.

[26] Noticeably, since 1994 or 1995, during the long and established marriage, there has been a remarkable enhancement of the parties' lifestyle and standard of living, including prestigious and luxurious overseas holidays to various places such as Hongkong, Japan, Korea, Indonesia, India, Thailand and Singapore, in addition to club memberships in Bukit Kiara Equestrian and Country Resort Club and Royal Port Dickson Yacht Club, signifying the beginning of a secure, comfortable and luxurious lifestyle in the upper middle echelon of multi-millionaires in the Kuala Lumpur society, abundantly endowed with financial resources and spending capacity.

Matrimonial disputes

[27] Eruptions of their matrimonial disputes were reflected in the letter dated 18 September 1996 issued by the husband's solicitors, seeking a mutual consent to a divorce and the husband's proposal for full and final settlement 'to sell off the assets and businesses and thereafter to distribute the proceeds derived thereof to the respective shareholdings of each shareholder as full and final settlement of the impending divorce.'

[28] In reply thereto, the wife's solicitors vide letter dated 23 September 1996 asked the husband 'to make a full and detailed declaration of all his assets within Malaysia and outside the jurisdiction for a fair and equitable distribution.'

Subsequent events

[29] The husband's solicitors did not respond to the letter of the wife's solicitors but instead in November 1996, the husband caused LPI (M) to cease business and later sold it to UPI Manufacturing at cost, without a directors' or a shareholders' resolution although the wife was at all material time its director, shareholder and guarantor.

[30] The husband was a director and a shareholder owning 110,002 shares in UPI Manufacturing having the same business, ie sale and distribution of printing ink. On 15 September 1996, the husband resigned as director of UPI Manufacturing and on the same day made their daughter Mooi Heong a director, to whom he had transferred his entire shareholding.

[31] On 7 December 1998, Mooi Heong has 220,004 shares in UPI Manufacturing and 50% of its paid up capital has been issued otherwise than in cash.

[32] When the wife asked for the accounts and records of LPI (M) at its board of directors meeting on 29 October 1998, the husband proposed for the removal of the wife as a director, which came into effect on 4 December 1998. Nevertheless, the wife continued to remain as shareholder and guarantor. The husband was unable to verify the accounting records of LPI (M) as, he claimed, they had been destroyed in a fire at the garden shed of Bungalow No 5.

[33] The husband's attempt in July 1998 to remove the wife as a director of Sathyam Holding by pre-signing Form 49 was foiled when the company secretary vide letter dated 23 June 1999 required the husband to follow proper procedure. The wife is still a guarantor, director and shareholder of Sathyam Holding.

[34] In 1996, the husband transferred his shares in Lai Company to their daughter Mooi Heong.

Wife's financial conditions

[35] Serious matrimonial problems presented the wife with no other alternative but to leave Bungalow No 5 on 29 October 1998 in a state of adverse financial straits, as the husband gave the wife no maintenance, dividends or director's fees while she continued as a guarantor.

[36] However, the wife's destitute conditions had compelled her to re-seek shelter in Bungalow No 5, but the husband vide his solicitor's letter dated 25 May 2000 claimed that the wife was a trespasser at her own risk and would take whatever action he deemed necessary to hold the wife liable for loss and damage to the property.

[37] From May 2000, the husband offered the wife a monthly maintenance of RM1,500.

Husband's financial means

[38] The husband testified that his monthly income is RM6,100, derived from the following particulars:

Property	Income (RM)
(1) Monthly rental income from No. 702 Jalan Ipoh Kuala Lumpur	3,600
(2) Monthly rental income from No 702B Jalan Ipoh Kuala Lumpur	500
(3) Monthly salary from LPI (M)	2,000
Total	6,100

[39] However, upon a proper perusal of the affidavits filed herein and the wife's evidence, it is to be noted that the husband did not disclose his income derived from the following:

(4) Rental income from Parcel No G 008 Subang Summit with effect from 10 July 2000	6,627.58
(5) Bonus from Tan Yew Lai & Sons for the years 1995, 1996 and 1997	370,000.00
(6) Bonus from Tan Yew Lai & Sons for the year 1998	138,239.00
(7) Monthly rental income from Bungalow No 2 from 1988 to 1999	6,000.00

[40] Similarly, from the parties' affidavits and oral evidence, it is also clear to me that the husband's undisclosed means include the following:

(8) Share Finance account with Citibank	5,000,000.00
(9) Market value of share portfolio with Arab-Malaysia Securities Sdn Bhd as at 31 March 2000	540,268.68
(10) Fixed deposits with Mayban, Old Klang Road Branch	540,000.00
(11) Shares registered with Malaysia Central Depository Sdn Bhd	
(12) Monthly rental collections from properties owned by LPI (M)	23,450.00
(13) Monthly rental collections from properties owned by Sathyam Holding	7,600.00
(14) A share in No 42 Jalan Pahang KL owned by Tan Yew Lai & Sons valued at RM5,000,000	298,136.00

Wife's health

[41] PW3, Dato Dr N Arumugasamy during his lifetime testified for the wife in respect of the state of her health and her need for treatment not only by way of conventional medical procedure, but also specialist and consultant psychiatric treatment for depression as a result of the aforesaid matrimonial disputes and that such conventional and specialist treatment would increase with her age.

Wife's properties

[42] The wife's properties are as follows:

TYPE	TITLE NO	COST PRICE	VALUATION	RENTAL RECEIVABLE
Single Storey terrace house Address: No 301, Jin 9A Tmn Dato Tan Yew Lai 58200 KL.	Lot 27226	29,000	150,000	550 per month
Flat Address: Unit D3003 Block D, 3rd Floor, Tmn Sri Lempah 58200 KL.	Strata Title	19,000	55,000	Nil
Condominium Address: Unit No Q-136 Bayu Beach Resort Port Dickson			110,000	Nil
Vacant Land Pasir Panjang	Lot 2249 (Under CT 16501) Mukim: Pasir Panjang District of Port Dickson		50,000	Nil

Husband's properties

[43] The husband's properties are as follows:

	TYPE	ADDRESS	TITLE NO	COST (RM)	FINANCE PRICE	VALUATION
1	Bungalow	No 2, Persiaran, Bkt Tinggi, Tmn Dato Tan Yew Lai 58200 KL.	Lot 27141 Freehold	16,000	Citibank O/D RM350,000	750,000

2	Bungalow	No 5, Jln Bkt Tinggi, Tmn Dato Tan Yew Lai 58200 KL	Lot 27142 Freehold	37,905 Plus Building	Pacific Bank OD 500,000	800,000
3	Land	Tmn Dato Tan Yew Lai	Lot 27146 Freehold			100,000
4	3-Storey Inter-mediate Shoplot	702, Jln Ipoh, KL	Lot 12 QT714 Freehold		Citibank O/D RM275,000	500,000
5	Shopping Lot	Subang Summit GO 08, Commercial Complex		1,083,000	AMBB RM660,000	1,083,000
6	Condo-minium	Star City		311,762	AMBB	311,762
						188,000
					1,973,000	3,544,762

[44] Properties owned by LPI (M):

	TYPE	ADDRESS	TITLE NO	COST	FINANCE PRICE	VALUATION
1	Double Storey Terrace House	No 91, Jln Dato Hj, Tmn Dato Tan Yew Lai, 58200 KL.	Lot 26881 HS(D) 40056 Freehold	99,000	Citibank O/D RM70,000	187,000
2	Condo-minium	OG Court Unit S-PDM04 Podium Floor 17-0-18, Jln Awam Jawa, Tmn Yarl, KL.		100,000		160,000

3	4-Storey Shoplot	No 5, Jin 2/ 137B Jin Kelang Lama	Lot 30834 HS(D) 4116 Leasehold	300,000 (1986)	Citibank O/D RM244,000	750,000
4	Inter-mediate Shoplot	No 35 & 35M Kuchai Enterpreneur Park, Jln Kuchai Lama KL.		212,750	Citibank O/D RM160,000	385,000
5	Semi-D Factory 11/2 Storey	No 18, Tmn Sg Besi, KL.	PT Lot No 1970 HS(D) 251685 Leasehold	500,000	RHB Bank O/D Bln RM120,000	650,000
6	Detached Factory	No 12 Subang Jaya Ind Est	Lot SML68 PT 9424 HS(D) 23912	300,000	RHB Bank O/D Bln 1,150,000	RM300,000
7	Car-Mercedes Benz-WEV 9009					290,000
					RM774.000	3,482,000

[45] Properties owned by Sathyam Holding:

	TYPE	ADDRESS	TITLE NO	COST	FINANCE PRICE	VALUATION
1	Single Storey Factory	S111, Jln Dato Hj 3, Tmn Dato Tan Yew Lai, 58200 KL.	Lot 26842	100,000		

2	Single Storey Factory	S112, Jln Dato Hj 3, Tmn Dato Tan Yew Lai 58200 KL	Lot 26843	100,000 190,000		300,000
3	31/2 Storey Shoplot	76, Jln Mega Intermediate Mendong, Off Kelang Lama KL	Lot 19502 HS(D) 14896 1353 sq ft Leasehold Exp 2076	300,000	Citibank O/D RM219,000	740,000
					RM218,000	1,040,762

SUBMISSIONS FOR PARTIES AND DECISION OF COURT

Maintenance

[46] Mr W Satchithanandhan, learned counsel for the wife, relied on several authorities which set out the purposes of awarding maintenance and the principles of assessment under s 78 of the Law Reform (Marriage and Divorce) Act 1976 ('the Act').

[47] For brevity and convenience, all sections in this Act shall hereinafter be simply referred to by the section only, unless otherwise stated.

[48] He suggested that a monthly maintenance of RM15,000 with effect from November 1998 till the date of the order of the court, and thereafter a monthly maintenance of RM10,000 or a lump sum payment of RM3,600,000 on the basis of the wife's life expectancy of 85 years calculated as follows:

RM10,000 x 12 x 30 = RM3,600,000

[49] He further asked for security of maintenance under s 79. In addition, he sought an immediate transfer of Bungalow No 2 or No 5 by the husband to the wife.

[50] Learned counsel Ms YN Foo together with Ms Faridah Abdullah submitted for the husband that the reliefs prayed for by the wife are far beyond what she is entitled to legally.

[51] In respect of maintenance, they contended that under ss 77 and 78 the claim for maintenance was inflated, arbitrary and without proof and not based on the means and needs of the parties, and that the wife is a hypochondriac who has faked her illness in order to get what she wanted.

[52] It was the husband's case that the wife's monthly needs came to RM2,421.67 and that the wife has her monthly rental income of RM500, while the husband's income was derived solely from rental of his properties and salary of RM2,000 as managing director of LPI (M).

[53] It was argued for the husband that after an order is made for distribution of matrimonial assets, no order for maintenance should be made in favour of the wife, as the husband's total monthly income was RM15,800 against his monthly expenses of RM24,510 inclusive of the monthly maintenance currently paid to the wife, resulting in a monthly shortfall of RM3,710.

[54] The husband denied any misrepresentation of his means and contended that the wife should not be given any maintenance, or at most the interim maintenance of RM1,500 was sufficient to meet her needs.

[55] The husband's answer to the wife's prayer for maintenance by way of a lump sum payment amounting to RM3,600,000 is that the Act does not contain any provision empowering the court to do so, or alternatively such lump sum payment should be reduced for contingencies.

[56] In my judgment, the issue of a fair and reasonable maintenance must be determined by reference to the facts and circumstances of each particular case. In this regard, I have taken into consideration:

(1) The 34-year marriage which the parties have shared through thick and thin and to which the wife in all probabilities has devoted the best part of her youthfulness;

(2) The 55-year-old wife who has been a full time housewife and homemaker throughout the 34-year marriage is not likely to be gainfully employed or is likely to be increasingly unemployable;

(3) The wife's health and medical needs are neither faked nor imagined by the wife but substantiated by the evidence of neurosurgeon Dato Dr N Arumugasamy (PW3), particularly pertaining to specialist treatment by psychiatric consultants for depression and other ailments with the advancement in age;

(4) The financial means of the husband;

(5) The standard of living enjoyed by the wife before her husband failed, neglected or refused to provide her with reasonable maintenance, ie an amount which would be sufficient to maintain the wife in the rank and position of life which she has hitherto occupied, in order to supply her with the necessaries, comfort and advantages incidental to her station in life: per Buttrose J in *Loke Wan Tho v Christina Loke* [1961] MLJ 254; per Herring CJ, Dean and Gowans JJ in *Lumsden v Lumsden* [1963] 5 FLR 388, at p 394;

(6) The means and needs of the parties, regardless of the proportion such maintenance bears to the income of the husband or wife, and the degree of responsibility which the court apportions to each party for the breakdown of the marriage: s 78;

(7) The Act is a piece of social legislation for which a liberal interpretation is more apt than a strict one: per Siti Norma Yaakob JCA (now FCJ) in *Diana Clarice Chan Chiing Hwa v Tiong Chiong Hoo* [2002] 2 MLJ 97 (CA).

(8) The word 'maintenance' is sufficiently broad to embrace, eg medical expenditure: *C v C* [1962] 4 FLR 461, at p 466 per Lowe, Dean and Pape JJ, Supreme Court of Victoria, Australia; and

(9) The scope of maintenance is very wide and signifies any form of provision that would enable an adult to live a normal life, and not mere subsistence: per Harman J. in *In Re Borthwick, Dec'd, Borthwick And Anor v Beauvais And Ors* [1949] 1 Ch 395, at p 401.

[57] In respect of medical expenses including check-ups, clinical tests and physiotherapy treatment, I accept PW3's evidence that the wife had backbone injury or disc protusion, for which corrective surgery had been recommended but to which she has yet to consent and has instead been relying on medication.

[58] Food and nutrition including meals taken by the wife occasionally at restaurants was a direct result of the matrimonial disputes which had left the petitioner with no matrimonial home to cook for herself. Hence, the alternative was eating out in restaurants and clubs, in addition to her necessaries, viz ginseng and herbs.

[59] During the subsistence of the marriage, the wife's lifestyle included having maids, after two years of marriage. It follows that she should continue to have at least one maid, more so in the light of her age at which she is not of good health. Hence, the maid's wages.

[60] During the subsistence of the marriage, the wife had the facilities and expenses for club membership and entertainment, eg at Bayu Resort and Yacht Club. She should be accorded the expenses for these facilities.

[61] Personal expenses for clothing, hair saloon, cosmetics and miscellaneous are also necessaries according to the wife's station in life.

[62] A car is necessary to the wife as she still has to travel. The previous mode of transportation was by the husband's private car. She should have a similar mode of transportation now. Her claim for the costs of maintaining a car, petrol and toll charges in the sum of RM1,000 per month is fair and reasonable.

[63] During the subsistence of the marriage, the husband was driving her around. Due to her health and medical conditions and in order to sustain a similar lifestyle, her claim for driver's wages and allowances is fair and reasonable.

[64] The wife is now on her own feet after 34 years of marriage and no one is going to fend for her anymore. In the light of her health conditions, it is necessary for her to purchase insurance coverage for critical illness.

[65] During the subsistence of the marriage, the wife enjoyed yearly overseas holidays, in Hong Kong, Korea, Japan, India and the ASEAN region. She should not be deprived of such facilities.

[66] In the circumstances, I award monthly maintenance of RM7,500, particularised as follows:

(1) Maintenance for medical expenses including check ups, clinical tests and treatment physiotherapy treatment		RM1,000
(2) Food and nutrition occasionally at restaurants		RM1,000
(3) Wages for a maid		RM 800
(4)Expenses for club membership and entertainment		RM1,000
(5) Personal expenses for clothing, hair saloon, cosmetics and miscellaneous		RM 800
(6) Petrol, toll charges and car maintenance		RM 500
(7) Driver's wages and allowances		RM1,000
(8) Insurance with critical illness cover		RM 500
(9) One overseas trip per year @ about RM10,000		RM 900
Per month		RM7,500

[67] This monthly maintenance shall commence from November 1998 and the interim maintenance of RM1,500 per month paid so far shall be debited therefrom.

Lump sum payment

[68] In response to the wife's submission for maintenance to be resolved by way of a lump sum payment, the husband argued that the Act does not contain any provision empowering this court to do so, but added that in the event that this court does decide to make such an order, the sum must be reduced for contingencies.

[69] At this stage, it is appropriate to consider the power of the courts in the United Kingdom, Singapore and Malaysia in making a maintenance order by way of a lump sum payment.

[70] In the United Kingdom, the power to order a lump sum payment is contained in s 2(1)(c) of the Matrimonial Proceedings and Property Act 1970; and has been ordered, eg in *Wachtel v Wachtel* [1973] 1 All ER 829; *Preston v Preston* [1982] 2 AER 41 (CA); and *Minton v Minton* [1979] AC 593.

[71] In Singapore, s 109(1) of the Women's Charter provides that a maintenance order may provide for the payment of a lump sum or such periodical payment as the court may determine, and so awards of a lump sum payment have been made, eg in *Jacqueline Bey v Edmond Lee Yok Lung* [1988] 2 MLJ 335 per Chua J; *Louis Pius Gilbert v Louis Anne Lise* [2000] 1 SLR 274 per Goh Joon Seng J; *Koh Kim Lian Angela v Choong Kian Haw* [1994] 1 SLR 22 Singapore (CA), per Karthigesu JA; and *Lee Puey Hwa v Tay Cheow Seng* [1991] 3 MLJ 1 (CA) per Yong Pung How CJ.

[72] In Malaysia, under s 77(1)(a), our High Court may order a man to pay maintenance to his wife or former wife during the course of any proceedings under the Act. In my view, the power to make such an order is not confined

to the award of maintenance by periodical payments only. Section 77(1)(a) contains no restrictive or prohibitive words to support the contention for the husband. The discretionary power of the court under s 77(1)(a) is unfettered in the sense that our court is empowered to make an award of maintenance by way of a lump sum payment having regard to the facts and circumstances prevailing in a particular case and established judicial principles.

[73] Such lump sum payments have been made, eg:

(1) in *SS v HJK* [1991] 1 LNS 99 per Mahadev Shankar J (later JCA) by way of a 'clean break';

(2) *Leow Kooi Wah v Philip Ng Kok Seng & Anor* [1997] 3 MLJ 133 per Mahadev Shankar J (later JCA) to assist the wife to maintain herself and the children of the family and not as a separate head of entitlement, but a different method of providing for the immediate requirements of the deserving spouse and the children where the circumstances so require;

(3) *V Sandrasagaran Veerapan Raman v Dettarassar Veletine Souvina Marie* [1995] 5 CLJ 474 per Faiza Tamby Chik J by applying the 'clean break' principle; and

(4) *Tham Yin Kee (p) v Lim Hee Peng* [2002] 1 LNS 9 per Rahman Hussain J (now FCJ).

[74] Hence, there are abundant authorities to the effect that the courts in England, Singapore and our country may make an award of maintenance by way of a lump sum payment.

[75] I am unable to uphold the aforesaid contention for the husband.

[76] Reverting to the facts and circumstances of the instant case, it is clear that the 34-year marriage was good while it lasted. Happiness and good fortune accompanied the parties during the subsistence of the marriage, as has been unfolded in the above narrative of the factual background. However, that was not to be the case for good nor was it for eternity. The few years immediately preceding the presentation of this petition had been characterised by absolute acrimony and diabolical discord, horrendous hardship and almost lifelong litigation. The irresistible inference that may reasonably be drawn from the facts and circumstances of this particular case is that the parties are obviously desirous of putting a permanent end to all the bitterness and nightmares which constantly puncture the happiness which they had previously shared and showered upon each other.

[77] Having regard to the properties of the parties respectively, and their individual circumstances, I am of the view that the husband has the financial means, capacity and resources to make a lump sum payment in order to achieve a practicable and feasible clean break.

[78] In the circumstances, I exercise my discretion and award maintenance by way of a lump sum payment of RM1m to be paid by the husband to the wife, made up of RM7,500 per month x 12 for 13 years, taking into account contingencies.

Security for maintenance

[79] The wife relied on s 79 to seek an order to secure the whole amount of maintenance. As the stand taken for the husband was that there should be no order for maintenance or at most RM1,500 per month, there was no reply to this issue.

[80] I am of the view that this court has the power to make an order to secure the payment of the aforesaid lump sum maintenance, as s 79 reads:

> Power for court to order security for maintenance
>
> The court may in its discretion when awarding maintenance order the person liable to pay such maintenance to secure the whole or any part of it by vesting any property in trustees upon trust to pay such maintenance or part thereof out of the income from such property and, subject thereto, in trust for the settler.

[81] In accordance with s 79, I make an order that the matrimonial home Bungalow No 5 be hereby vested in the husband as trustee upon trust for the wife and such trust shall be registered with the relevant land administrator or land registry by way of security for the payment of the said lump sum maintenance of RM1m to the wife with a proviso that such trust shall be discharged upon the satisfaction by the husband of the order for lump sum maintenance.

Matrimonial assets

[82] It was submitted for the wife that the court must consider the husband's assets as on 16 August 2000 when decree nisi was entered and that a fair and equitable share of cash and value of shares to be distributed to the wife should be RM2m. Section 76 was cited in support.

[83] For the husband, it was again contended that the reliefs prayed for by the wife have gone far beyond what she is entitled to legally.

[84] Both parties cited s 76, the importance of which merits reproduction as follows:

> (1) The Court shall have power, when granting a decree of divorce .... order the division between the parties of any assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of sale.
>
> (2) In exercising the power conferred by subsection (1) the court shall have regard to:
>
> (a) the extent of the contributions made by each party in money, property or work towards the acquiring of the assets;
>
> (b) any debts owing by either party which were contracted for their joint benefit;
>
> (c) the needs of the minor children, if any, of the marriage.
>
> (3) The court shall have power, when granting a decree of divorce to order the division between the parties of any assets acquired during the marriage by the sole effort of one party to the marriage or the sale of any such assets and the division between the parties of the proceeds of sale.

(4) In exercising the power conferred by subsection (3) the court shall have regard to:

(a) the extent of the contributions made by the other party who did not acquire the assets to the welfare of the family by looking after the home or caring the family;

(b) the needs of the minor children, if any, of the marriage;

and subject to those considerations, the court may divide the assets or the proceeds of sale in such proportion as the court thinks reasonable; but in any case the party by whose efforts the assets were acquired shall receive a greater proportion.

(5) For the purposes of this section, references to assets acquired during a marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts.

[85] In my view, s 76 made it clear that there are two categories of assets for division viz:

(1) under s 76(l), assets acquired by the couple by their joint efforts, and the court must consider :

(a) the extent of the contributions made by each person in money, property or work towards acquiring of the assets: s 76(2)(a); and

(b) any debts owing by either party which were contracted for their joint benefit: s 76(2)(b).

(2) under s 76(3), assets acquired by the sole effort of one party to the marriage and the court must consider:

(a) the extent of the contributions made, by the other party who did not acquire the assets, to the welfare of the family by looking after the home or caring for the family s 76(4)(a); and

(b) the needs of the minor children, if any, of the marriage: s 76(4)(b).

[86] Section 101 of the Evidence Act 1950 provides for the burden of proof in the following words:

Whoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist.

[87] Since the wife is seeking judgment on the division of assets under s 76, the burden is cast on her to prove:

(a) that the assets fall within s 76; and

(b) her contribution towards acquiring those assets.

[88] In respect of Bungalows No 2 and No 5, it was argued for the husband that they were gifts from his father Dato Tan Yew Lai, on the basis of the evidence adduced through his brother DW2 who is also the managing director of the company Tan Yew Lai & Sons Sdn Bhd that the two Forms 14A viz the memoranda of transfer which stated that sums of money were received in consideration of both properties did not accurately reflect the true nature of the transaction, but were facades.

[89] Naturally, objection was raised for the wife that this extrinsic evidence is inadmissible, being in contravention of ss 91 and 92 of the Evidence Act 1950.

[90] In respect of the admissibility of each of the memoranda of transfer, I have in the course of this trial made the following ruling:

Ruling of the court:

The transfer in Form 14A is between two individuals Tan Yew Lai and Tan Kim Chai. No company is involved here. It is a statutory form containing all the particulars which the National Land Code 1965 requires to be included. It is covered by s 91 and so no other evidence shall be given except Form 14A itself.

Evidence by this witness is also not admissible because he is neither the transferor nor the transferee.

[91] I stand by and adhere to my ruling and would not allow it to be re-opened. The husband's avenue is to proceed by way of an appeal to the Court of Appeal: see eg *Hartecon JV Sdn Bhd & Anor v Hartela Contractors Ltd* [1996] 2 MLJ 57 at p 58 (CA).

[92] Assuming for a moment that I have erred in rejecting the extrinsic evidence, I shall *ex abundante cautela* consider it for whatever it is worth.

[93] The two memoranda of transfer expressly declared that the transferor Dato Tan has transferred to the husband Bungalows No 2 and No 5 at a consideration of Ml6,000 and RM37,905 some two decades ago. This is a transaction *in rem* and registration has been effected at the relevant land authority. Both the transferor and the transferee had declared to the whole world that they were transfers of properties for valuable consideration and everybody has acted upon it for the same period without any qualm or complaint.

[94] Now a non-party or stranger to the transactions has, after two decades, emerged to take an oath in a court of law and testified as above and wanted me to believe his version of the story. The practical effect of accepting DW2's evidence, that the two memoranda of transfer were facades, is that the transferor, ie Dato Tan and the transferee, the husband, were both manipulating the engine of deceit or fraudulent misrepresentation which had been perpetrated on the land administrator, the land registry and anybody who has dealings with them.

[95] Deceit or fraudulent misrepresentation is a false statement of fact made knowingly by the representor, eg the transferor and the transferee here, without belief in its truth or recklessly without caring whether it is true or false with intent that it should be acted upon by the representee, eg the land administrator here: *Tara Rajaratnam v Datuk Jagindar Singh & Ors* [1983] 2 MLJ 127.

[96] The admission of DW2's evidence would also result in the commission of deceit or fraud by the transferor and the transferee within the meaning of s 17 of the Contracts Act 1950 which includes, inter alia, an act committed by a party to the contract, ie the transfer of property by way of valuable consideration with intent to deceive another party.

[97] The existence or otherwise of fraud is a question of fact to be determined in the light of the facts and circumstances surrounding each particular case: per Abdul Hamid FC (later CJ Malaysia) in *Tai Lee Finance Co. Sdn. Bhd v Official Assignee & Ors* [1983] 1 MLJ 81 (FC).

[98] In the instant case, either DW2 is not telling the truth or the transferor and the transferee were involved in deceit or fraud.

[99] I have no hesitation in coming to a specific finding of fact that in the face of the two memoranda of transfer, his evidence is illusory, incredible and inherently improbable, being completely contradictory to contemporary documents viz the two memoranda of transfer which contain essential statutory particulars.

[100] Having regard to the memoranda of transfer, I am of the view that these two contemporary documents reflect the truth and that DW2's evidence is hereby rejected.

[101] The two memoranda of transfer must be construed without any extrinsic evidence, as s 91 provides that the contents of a document must be proved by the document itself and s 92 provides that subject to certain provisos, no evidence of any oral evidence or statement shall be admitted for the purpose of contradicting, varying, adding to or subtracting from its terms (see also the judgment of Mohamed Azmi SCJ (as he then was) in *Keng Huat Film Co Sdn Bhd v Makhanlall (Properties) Pte Ltd* [1984] 1 MLJ 243 at p 248C (FC).

[102] On the facts and circumstances of this case, I am unable to sustain the submission for the husband that the two bungalows were gifts from his late father.

[103] In my view, even if the two bungalows were gifts, that would not fulfil the husband's hope to exclude them from distribution as matrimonial assets. In this regard, I am mindful of two conflicting High Court judgments, which I shall consider now.

[104] *N(f) v C* [1997] 3 MLJ 855 was relied on by the husband. There the respondent husband and the petitioner wife were married in 1979. A decree for judicial separation was granted in 1997. The issue concerned the petitioner's claim for a portion of the matrimonial home purchased before their marriage and registered in the names of both the respondent and his mother in equal share. Upon his mother's death, the mother's half share was transferred to the respondent in 1986. The other half share in the respondent's name was purchased by way of a housing loan to which the respondent paid a monthly installment of RM400 during their marriage.

[105] In respect of the mother's half share transferred to the respondent, James Foong J held that it was a gift, and so not subject to division, being outside the confines of s 76(l).

[106] On the other hand, in *Doris Howell v Put Jin Kong & Anor* [1999] 1 AMR 476, the submission that the properties which were gifts and not subject to division was rejected by Ian Chin J, who relied on *Chambers Concise Dictionary* for the ordinary, natural meaning of the word 'acquire', ie 'to gain

or to get' and concluded that 'to have been vested with properties as a result of a gift or bequest' would mean gaining or getting such properties which is a form of acquiring an asset with the meaning of s 76.

[107] On my part, I am in entire agreement with the conclusion of Ian Chin J. I would add that the terms 'acquiring of assets' and 'acquired' used in s 76 are not accompanied by any word of limitation, restriction or prohibition and so are intended to be free from any trammels. In the *Concise Oxford Dictionary* (9th Ed), the meaning of the word 'acquire' as 'gain by or for oneself, obtain'; come into possession of. I am therefore unable to sustain the submission for the husband and hold that these two bungalows are subject to division.

[108] In relation to other assets, which consist primarily of shares in private and public limited companies listed on the then Kuala Lumpur Stock Exchange (now Bursa Malaysia), it is my specific finding that the husband has, after issuing the notice to divorce the petitioner, transferred to his brother and daughter the shares in UPI Manufacturing, Lai Company Sdn Bhd, Malayan Plantation-C, Olympia, Borneo, Kejora, United Engineers (M)-W, Esprit and Wong, Timewell, Denko, Mercury, Harming Saag, and that the husband was at all material time the managing director in LPI (M) in which the accounts for the years 1998, 1999 and 2000 have been qualified in the absence of proper documentation and verification.

[109] Administrative expenses of RM643,900 for the financial year had been incurred by the husband in LPI (M) for the purposes of collecting rentals for six properties in the Klang Valley. Further, the accountant PW2 testified that a sum of RM36,840 incurred for office equipment and machinery has been written off to zero at the end of 1998, and explained that the asset could be transferred to a related company and there was no reason to write off. In the face of the accountant's evidence, the husband testified that the said sum was for renovations without any supporting document.

[110] The annual rental collected by LPI (M) was RM281,400 while that for Sathyam Holding was RM91,200 but the repayment of the loans taken by LPI (M) was RM109,453,99 for three years from 31 December 1999 to 30 January 2003, ie about RM36,500 per year, while that for Sathyam Holding for the same period was RM44,242.22, ie about RM15,000 per year. The repayments for the loans are a far cry from the rental collections. The husband offered no explanation for such chasms.

[111] The case for the husband is that only the shares in LPI (M) and Sathyam Holding should be considered for distribution, and that for this purpose, the proportion representing the shares held by the children of the marriage should be taken into account.

[112] It was submitted that the wife has not included the property at No 10, Persiaran Awam Jawa of which she owns a half share valued at RM800,000 in her name, and not as a trustee for the Sathya Sai Baba Centre.

[113] In my view, the only reasonable irresistible inference is that there has been a private accumulation of the surplus by the husband in order to deprive the wife of any division therefrom. This is clearly confirmed by the removal of the wife as a director of LPI (M).

[114] In my judgment, there can be no doubt that the properties held by LPI (M) and Sathyam Holding and all the share portfolios which the respondent previously held but had disposed of as alluded to above should be subject to distribution. Although the wife was an illiterate who never worked during her marriage, the husband had become rich and successful not merely due to his own efforts, but also as a result of the contributions by the wife who was obviously not an extra baggage.

[115] The wife has been the other joint major shareholder and director in both LPI (M) and Sathyam Holding and in these capacities, she has an important role to play, executing all company documents in order to keep them functional and operational, pursuant to the Companies Act 1965 and all rules and regulations made thereunder, in addition to other relevant laws.

[116] The fact that the husband was in daily management and control of the companies did not in any way diminish the vital role played by the wife, in her capacity as a major shareholder, a director, a wife, a mother and in social functions, and these roles certainly cannot be measured with mathematical or military precision. The fact that they had shared their married life for the best part of their prime time spanning over 34 years is clear testimony of their readiness, ability and willingness to nurture, strengthen and enhance the success of their marriage. However, immediately preceding the presentation of this petition, the fabric and texture of that marriage had unhappily and unfortunately collapsed like a row of falling dominoes.

[117] To say the least, each party has by way of complementary and supplementary roles contributed towards the fortunes amassed and the welfare of the family during the marriage, with the wife taking the role of a full-time housewife and homemaker domestically, while the husband attended to the business commercially.

[118] In construing s 76, it is natural that our courts must have due regard to our Malaysian social and cultural texture and aspirations pertaining to marriage, divorce and welfare, as has been so clearly stated by Mahadev Shankar JCA (as he then was) in *Ching Seng Woah v Lim Shook Lin* [1997] 1 MLJ 109, at p 122H–I (CA).

[119] The wife who looks after the home and family contributes as much to the family as the wife who goes out to work, in kind and in money or money's worth respectively and if the court comes to the conclusion that the home has been acquired and maintained by the joint efforts of both, then, when the marriage breaks down, it should be regarded as the joint property of both of them, no matter in whose name it stands, and if the wife who makes substantial money and contributes gets a share, so should the wife who looks after the home and cares for the family for 20 years or more: per Lord Denning, MR in *Wachtel v Wachtel*.

[120] In the instant case, on the facts as alluded to above, I have no doubt that the wife has fulfilled and contributed enormously to the welfare and well being of the family life. Her illiteracy is a shortcoming but it is not to be regarded as an impediment to her contribution to the well being of the

family. With three children, one of whom was a spastic a few days after birth, the wife must certainly have been more then preoccupied attending to their needs and welfare, besides marketing in the morning and other household chores such as supervising the maids during the 34 years of marriage.

[121] There is no doubt that all the assets of the husband and the wife and those held in the name of the companies have been acquired by the parties during their marriage by their joint effort, and in accordance with the judgment of Abdul Hamid Mohamed JCA (now FCJ) delivered for the Court of Appeal in *Sivanes a/l Rajaratnam v Usha Rani a/p Subramaniam* [2002] 3 MLJ 273 at p 279, it is trite law that there must be a fair and equitable division of the matrimonial assets that exist at the time of the divorce, taking into account the factors provided by s 76.

CONCLUSION

[122] On the foregoing grounds, I make the following orders:

(1) a lump sum paymemt of RM1,000,000 less the interim maintenance of RM1,500 per month paid by the husband to the wife with effect from August 2000, and the said lump sum payment to be secured by way of Bungalow No 5;

(2) an amount of RM1,000,000 to be paid by the husband to the wife for all the portfolios of shares;

(3) the transfer of Bungalow No 2 by the husband to the wife immediately, free from all encumbrances;

(4) the assets held in the name of LPI (M) and Sathyam Holding at the net value as at the date of decree nisi, to be divided in proportion to their respective shareholdings in the two companies by way of cash payment on or before 1 August 2005;

(5) that the husband be restrained from charging, selling or otherwise disposing of any of the properties referred to in this judgment save and except in compliance with the order of this court;

(6) that after the division of the relevant properties in accordance with this order, the wife be discharged from all guarantees and securities executed by the wife in favour of the two companies;

(7) the husband to pay the wife costs of the proceedings in this petition;

(8) in respect of the cross-petition by the husband, an order that the wife shall forthwith be removed as director, shareholder and guarantor of the two companies given in favour of banks and financial institutions and all caveats entered by the wife on all the properties in these proceedings be removed forthwith; and

(9) all documents including the release letter pertaining to vehicle bearing registration No WEV 9009 shall forthwith be surrendered by the wife to the husband.

Application allowed.

Reported by I Izzuddin